



DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA-2022-0032]

Renewal Package from the State of Alaska to the Surface Transportation Project Delivery Program and Proposed Memorandum of Understanding (MOU) Assigning Environmental Responsibilities to the State

AGENCY: Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Notice; request for comments.

SUMMARY: This notice announces that FHWA has received and reviewed a renewal package from the Alaska Department of Transportation & Public Facilities (DOT&PF) requesting renewed participation in the Surface Transportation Project Delivery Program (Program). This Program allows for FHWA to assign, and States to assume, responsibilities under the National Environmental Policy Act (NEPA), and all or part of FHWA's responsibilities for environmental review, consultation, or other actions required under any Federal environmental law with respect to one or more Federal highway projects within the State. The FHWA determined the renewal package to be complete and developed a draft renewal MOU with DOT&PF outlining how the State will implement the Program with FHWA oversight. The public is invited to comment on DOT&PF's renewal package, which includes the draft renewal MOU that describes the proposed assignments and assumptions of environmental review, consultation, and other activities.

DATES: Please submit comments by [insert date 30 days after date of publication in the Federal Register].

ADDRESSES: You may submit comments, identified by DOT Document Management System (DMS) Docket Number FHWA-2022-0032, by any of the methods described below. To ensure that you do not duplicate your submissions, please submit them by only one of the means below. Electronic comments are preferred because Federal offices experience intermittent mail delays from security screening.

- Federal eRulemaking Portal: Go to www.regulations.gov and follow the online instructions for submitting comments.
- Facsimile (Fax): 1-202-493-2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Ave. SE, West Building Ground Floor, Room W12-140, Washington, DC 20590.
- Hand Delivery: West Building Ground Floor, Room W12-140, 1200 New Jersey Ave. SE, Washington, DC 20590 between 9 a.m. and 5 p.m. e.t., Monday through Friday, except Federal holidays.

Instructions: You must include the agency name and docket number at the beginning of your comments. All comments received will be posted without change to www.regulations.gov, including any personal information provided.

FOR FURTHER INFORMATION CONTACT:

For FHWA: Melissa Parker by email at: Melissa.Parker@dot.gov or by telephone at (907) 586-7430. The FHWA Alaska Division office's normal business hours are 8 a.m. to 4:30 p.m. Alaska Time, Monday-Friday, except for Federal holidays. For the State of Alaska: Douglas Kolwaite, by email at: Douglas.Kolwaite@alaska.gov or by telephone at (907) 465-8413. State business hours are the same as above although State holidays may not completely coincide with Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users may reach the Office of the Federal Register's home page at: <https://www.archives.gov/> and the Government Publishing Office's database at: <https://www.govinfo.gov/>. An electronic version of the proposed renewal MOU may be downloaded by accessing the DOT DMS docket, as described above, at <https://www.regulations.gov>.

Background

Section 327 of Title 23, United States Code (U.S.C.), allows the Secretary of the DOT to assign, and a State to assume, the responsibilities under the NEPA (42 U.S.C. 4321 et seq.) and all or part of the responsibilities for environmental review, consultation, or other actions required under certain Federal environmental laws with respect to one or more Federal-aid highway projects within the State. The FHWA is authorized to act on behalf of the Secretary with respect to these matters.

The DOT&PF entered the Program on November 13, 2017, after submitting its application to FHWA, obtaining FHWA's approval, and entering into a MOU in accordance with 23 U.S.C. 327 and FHWA's application regulations for the Program (23 CFR part 773).

On May 15, 2016, prior to submittal of its application to FHWA, DOT&PF published in the Alaska Administrative Register and solicited public comment on its draft application to participate in the Program. After considering and addressing public comments, DOT&PF submitted its application to FHWA on July 12, 2016. The application served as the basis for developing the MOU identifying the responsibilities and obligations DOT&PF would assume. The FHWA published a notice of the draft MOU in the Federal Register on August 25, 2017, soliciting the views of the public and Federal agencies on FHWA's preliminary decision to approve the application. Following the comment period, FHWA and DOT&PF considered comments and proceeded to execute the MOU (2017 MOU). Effective November 13, 2017, DOT&PF assumed

FHWA's responsibilities under NEPA, and the responsibilities for reviews under other Federal environmental requirements. The MOU was amended on August 20, 2020, to clarify the categories of excluded projects and to reflect that DOT&PF had assumed responsibility for the environmental review of the three projects (Gravina Access, Juneau Access, and Sterling Highway) that were excluded from assignment in the 2017 MOU.

On May 11, 2022, after coordination with FHWA, DOT&PF submitted a renewal package in accordance with the renewal regulations in 23 CFR 773.115. On September 13, 2022, DOT&PF sent a letter requesting further discussion on additional language in the renewal MOU. In a letter dated October 14, 2022, FHWA granted an extension of the MOU until March 13, 2023.

Under the proposed renewal MOU, FHWA would assign to the State, through DOT&PF, the responsibility for making decisions on highway projects within the State of Alaska that are proposed to be funded with Title 23 funds or otherwise require FHWA approval, and that require preparation of a categorical exclusion determination, environmental assessment (EA), or environmental impact statement (EIS). Excluded from assignment are any Federal Lands Highway projects authorized under 23 U.S.C. 202, 203, 204, and Section 1123 of the Fixing America's Surface Transportation Act (P.L. 114-94), unless such projects will be designed and constructed by DOT&PF; any project that crosses or is adjacent to international boundaries; projects under the Recreational Trails Program (23 U.S.C. 206); Denali Commission projects; Shakwak Program projects; any projects advanced by direct recipients other than DOT&PF; privately funded or other Agency funded projects requiring NEPA review as part of Interstate access approvals, unless such projects will be designed and constructed by DOT&PF; NEPA review for private requests for changes in controlled access, unless such projects will be designed and constructed by DOT&PF; and projects designed and

constructed by FHWA under a 23 U.S.C. 308 agreement between the FHWA Western Federal Lands Highway Division and DOT&PF.

The assignment also would give DOT&PF the responsibility to conduct the following environmental review, consultation, and other related activities:

Air Quality

- Clean Air Act, 42 U.S.C. 7401-7671q, with the exception of project level conformity determinations

Alaska Specific

- Alaska National Interest Lands Conservation Act (ANILCA), Public Law 96-487, except any responsibilities under 16 U.S.C. 410hh(4)(d)

Executive Orders (E.O.) Relating to Highway Projects

- E.O. 11593, Protection and Enhancement of the Cultural Environment
- E.O. 11988, Floodplain Management (except approving design standards determinations that a significant encroachment is the only practicable alternative under 23 CFR parts 650.113 and 650.115)
- E.O. 11990, Protection of Wetlands
- E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations
- E.O. 13007, Indian Sacred Sites
- E.O. 13112, Invasive Species, as amended by E.O. 13751, Safeguarding the Nation from the Impacts of Invasive Species
- E.O. 13175, Consultation and Coordination with Indian Tribal Governments
- E.O. 13985, Advancing Racial Equity and Support for Underserved Communities Through the Federal Government
- E.O. 13990, Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis

- E.O. 14008, Tackling the Climate Crisis at Home and Abroad
- Other Executive Orders not listed, but related to highway projects

FHWA-Specific

- Efficient Project Reviews for Environmental Decision Making, 23 U.S.C. 139
- Environmental Impact and Related Procedures, 23 CFR part 771
- Planning and Environmental Linkages, 23 U.S.C. 168, with the exception of those FHWA responsibilities associated with 23 U.S.C. 134 and 135
- Programmatic Mitigation Plans, 23 U.S.C. 169, with the exception of those FHWA responsibilities associated with 23 U.S.C. 134 and 135

Hazardous Materials Management

- Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9601-9675
- Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6901-6992k
- Superfund Amendments and Reauthorization Act (SARA), 42 U.S.C. 9671-9675

Historic and Cultural Resources

- Archeological Resources Protection Act of 1979, 16 U.S.C. 470(aa)-(mm)
- Native American Grave Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3001-3013; 18 U.S.C. 1170
- Preservation of Historical and Archeological Data, 54 U.S.C. 312501-312508
- Section 106 of the National Historic Preservation Act of 1966, as amended, 54 U.S.C. 306108

Noise

- Compliance with the noise regulations in 23 CFR part 772
- Noise Control Act of 1972, 42 U.S.C. 4901-4918

Parklands and Other Special Land Uses

- Land and Water Conservation Fund (LWCF) Act, 54 U.S.C. 200302- 200310
- Section 4(f) of the Department of Transportation Act of 1966, 23 U.S.C. 138, 49 U.S.C. 303 and implementing regulations at 23 CFR part 774

Social and Economic Impacts

- American Indian Religious Freedom Act, 42 U.S.C. 1996
- Farmland Protection Policy Act (FPPA), 7 U.S.C. 4201- 4209

Water Resources and Wetlands

- Clean Water Act, 33 U.S.C. 1251-1387
- Section 319, 33 U.S.C. 1329
- Section 401, 33 U.S.C. 1341
- Section 402, 33 U.S.C. 1342
- Section 404, 33 U.S.C. 1344
- Emergency Wetlands Resources Act, 16 U.S.C. 3901 and 3921
- Flood Disaster Protection Act, 42 U.S.C. 4001-4130
- Mitigation of Impacts to Wetlands and Natural Habitat, 23 CFR part 777
- Rivers and Harbors Appropriation Act of 1899, 33 U.S.C. 401, 403, and 408
- Safe Drinking Water Act (SDWA), 42 U.S.C. 300f- 300j-26
- Wetlands Mitigation, 23 U.S.C. 119(g)
- Wild and Scenic Rivers Act, 16 U.S.C. 1271-1287

Wildlife

- Anadromous Fish Conservation Act, 16 U.S.C. 757a-757f
- Bald and Golden Eagle Protection Act, as amended, 16 U.S.C. 668-668c
- Fish and Wildlife Coordination Act, 16 U.S.C. 661-667d
- Magnuson-Stevens Fishery Conservation and Management Act of 1976, as amended, 16 U.S.C. 1801-1891d
- Marine Mammal Protection Act, 16 U.S.C. 1361-1423h

- Migratory Bird Treaty Act, 16 U.S.C. 703-712
- Section 7 of the Endangered Species Act of 1973, 16 U.S.C. 1536.

The proposed renewal MOU would allow DOT&PF to continue to act in the place of FHWA in carrying out the environmental review-related functions described above, except with respect to government-to-government consultations with federally recognized Indian Tribes. The FHWA will retain responsibility for conducting formal government-to-government consultation with federally recognized Indian Tribes, which is required under some of the listed laws and E.O.s. The DOT&PF will continue to handle routine consultations with the Tribes and understands that a Tribe has the right to direct consultation with FHWA upon request. The DOT&PF also may assist FHWA with formal consultations, with consent of a Tribe, but FHWA remains responsible for the consultation. The DOT&PF also will not assume FHWA's responsibilities for conformity determinations required under Section 176 of the CAA (42 U.S.C. 7506) or any responsibility under 23 U.S.C. 134 or 135, or under 49 U.S.C. 5303 or 5304.

The MOU content reflects DOT&PF's desire to continue its participation in the Program. The FHWA and DOT&PF have agreed to modify some of the provisions in the MOU to, among other things: clarify the categories of projects excluded from assignment; designate a Senior Agency Official at DOT&PF consistent with 40 CFR 1508.1(dd); remove auditing requirements; revise monitoring requirements; update record retention requirements; provide for enhanced reporting to FHWA on issues including environmental justice analysis and associated mitigation, where applicable; revise provisions related to data and information requests; and revise provisions related to FHWA-initiated withdrawal of assigned projects.

A copy of the proposed renewal MOU and renewal package may be viewed on the DOT DMS Docket, as described above, or may be obtained by contacting FHWA or the State at the addresses provided above. A copy also may be viewed on DOT&PF's

Website at <https://dot.alaska.gov/stwddes/desenviron/resources/nepa.shtml>. The FHWA Alaska Division, in consultation with FHWA Headquarters, will consider the comments submitted when making its decision on the proposed MOU revision. Any final renewal MOU approved by FHWA may include changes based on comments and consultations relating to the proposed renewal MOU and will be made publicly available.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing E.O. 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 327; 42 U.S.C. 4331, 4332; 23 CFR part 773; 40 CFR 1507.3, 1508.4.

Issued on: January 26, 2023.

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